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CITIZENS, THEIR RIGHTS AND IMMUNITIES.

I. *Who are Citizens.* All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside: Art. XIV. Amendts. Con. U. S. This includes men, women, and children and is a general definition: Bouvier's Law Dict. It may be said also that a citizen is a person who owes the State allegiance, service, and money by the way of taxation, and to whom the State grants liberty of person and conscience, the right of acquiring property, of marriage, and social relations, and security in person, estate, and reputation: *Amy* v. *Smith*, 1 Litt. (Ky.) 332. In a limited sense a citizen is a person, natural or naturalized, who has the privilege of voting for public officers, and who is qualified to fill offices in the gift of the people: Webster's Dict.

Who is subject to the jurisdiction thereof. In *Lynch* v. *Clarke*, 1 Sand. Ch. 584 (1819), the court held that birth of itself in the United States gave citizenship. In this case, a child was born of alien parents during their temporary sojourn in this country, and they left the United States within the first year of the child's age and never returned. This decision was grounded upon the doctrine of the common law, that all persons born within the king's allegiance are subjects, and holds that this was the law of the thirteen colonies, and at the adoption of the Federal Constitution, this subject of citizenship passed exclusively to the United States when the Union

was perfected; that the question is national and not for the individual States.

This doctrine finds support in other decisions. *In re Look Tin Sing*, U. S. Circ. Ct. Dist. Cal. Sept. 29, 1884, 21 Fed. Rep. 905, the words "subject to the jurisdiction thereof" were construed, and it was held that the previous doctrine, before the amendment, except as applied to Africans and their descendants, was, that birth within the dominion and jurisdiction of the United States, of itself created citizenship. In this decision it was held that the Fourteenth Amendment to the Federal Constitution was adopted as an authoritative declaration of this doctrine as to the white race, and also to remove the exceptions as to the negroes and their descendants. So a Chinese, born of alien parents within the dominion and jurisdiction of the United States, who reside therein, and not engaged in any diplomatic official capacity, under the Chinese government, is a citizen of the United States. Of course, children born of ambassadors, are not citizens of the United States, though born within the dominion of this country. By a fiction of international law, they are subjects of their own country. So one born in a foreign country is a citizen, if at the time of his birth his father was a citizen of the United States: *Oldtown* v. *Bangor*, 58 Me. 353.

The opening sentence of the Fourteenth Amendment was to settle the question as to citizenship, and to establish the doctrine that all persons, of whatever color, whether formerly slaves or not, born or naturalized in the United States, and owing no allegiance to any other nationality, should be citizens of the United States and of the State in which they reside. There are two sources of citizenship, birth and naturalization; "subject to the jurisdiction thereof," means completely subject to the political jurisdiction of the United States, and owing this government immediate allegiance: *Elk* v. *Wilkins*, 112 U. S. 94; *Strauder* v. *W. Virginia*, 100 Id. 303; *Slaughter-house Cases*, 83 Id. 36; *Inglis* v. *Trustees*, 28 Id. 99.

(a) *Federal and State Citizenship.* Citizenship has a two-fold character: National and State. Each power is distinct, and has citizens of its own, who owe allegiance to each. The

same person may be at the same time a citizen of the United States and of a State. His rights under these two jurisdictions are different. The United States government within its own province is supreme and omnipotent. But it cannot secure to its citizens rights or privileges which are not expressly or by implication placed under its jurisdiction: *United States* v. *Cruikshank*, 92 U. S. 542; sovereignty, for protection of the rights of life and personal liberty within the respective States, rests alone with the States. The Fourteenth Amendment prohibits a State from depriving any person of life, liberty, or property without due process of law, and from denying to any person within its jurisdiction the equal protection of the law, but it adds nothing to the rights of one citizen as against another: *Slaughter-house Cases*, *supra.*

United States citizenship can be conferred only by the United States naturalization laws, upon aliens; but each State, in the exercise of its local and reserved sovereignty, may place aliens or other persons on a footing with its own citizens as to political rights and privileges to be enjoyed within its own jurisdiction. State regulations do not make the person on whom the right is conferred a citizen of the United States, entitled to the privileges and immunities of citizens of other States. There is a distinction between local rights of citizenship within a State and citizenship of the United States: *Dred Scott* v. *Sandford*, 60 U. S. 393.

(b) *The right of suffrage.* The right of suffrage is not a necessary incident of citizenship. This right depends on the law of the State in which a citizen resides, and is not granted to him by the Constitution of the United States. The Federal Constitution only provides that he shall not be *deprived* of suffrage by reason of his race, color, or previous condition of servitude: *Minor* v. *Happersett*, 88 U. S. 162; *Robinson's Case*, 131 Mass. 376; *United States* v. *Crosby*, U. S. Circ. Ct. Dist. S. Cal. November Term, 1871, 1 Hughes, C. C. 448. Each State has a right to prescribe the qualifications of its voters. Naturalization does not confer this right. The qualifications which an elector is required to have, even in Congressional elections, are prescribed by the State of

which he is a resident, and it is not necessary that he be a citizen of the United States: *Spragins* v. *Houghton*, 3 Ill. (2 Scam.) 377. Electors and citizens are not convertible terms. Each State determines who shall be allowed to cast the ballot, and may give this right to Indians, women, and children. This is the law even as to voting for Congressmen and for the electors of the President of the United States: 1 Sharswood's Bl. Com. 376, note.

II. *Negroes.* The Fourteenth Amendment to the Federal Constitution secures to negroes all the rights enjoyed by any other citizens, and denies to the States the power to withhold from them equal protection. Any statute which denies to negroes the rights and privileges of participating in the administration of the law, because of their color, when qualified in other respects, is a discrimination which is forbidden by this amendment: *Strauder* v. *W. Virginia*, *supra.*

The Fifteenth Amendment denies to the State the power to give preferences to white citizens over those who are black, on account of race or previous condition of servitude. This amendment does not confer the right of suffrage, but protects all citizens of the United States against adverse discrimination. The right to vote in the States comes from the States, but the right to protection from discrimination among citizens comes from the United States government: *U. S.* v. *Reese*, 92 U. S. 214; *Minor* v. *Happersett*, *supra.* A mixed jury in a particular case is not essential to equal protection of the laws, and while in the selection of a jury to pass upon life and liberty there must be no exclusion of race, so far as the negro and the white race is concerned, and no discrimination against the negro because of his color, a negro has no right to be tried by a jury of colored men exclusively: *Virginia* v. *Rives*, 100 U. S. 313.

III. *Naturalization.* Before the passage of the present law of the United States, several of the States exercised the power to naturalize and admit to citizenship, according to their own laws: *Goodell* v. *Jackson*, *et al.* 20 Johns. 693; *State* v. *Managers*, 1 Bail. (S. Car.) 215; *State* v. *Ross*, 7 Yerg. (Tenn.) 74.

This power of naturalization now lies exclusively with the general government and the States individually are deprived

of such power: *Ex parte Knowles*, 5 Cal. 300; *Smith* v. *Turner*, 48 U. S. 283; *Thurlow* v. *Massachusetts*, 46 Id. 585; *Chirac* v. *Chirac*, 15 Id. 259; *Houston* v. *Moore*, 18 Id. 48.

IV. *Indians.* Indians are not citizens. They are within the territorial limits of the United States, and so not really foreigners. But they constitute alien nations, distinct political communities, with whom the United States deal, as they see proper, either by treaty made by the President and Senate, or by Act of Congress in the ordinary form of legislation. They seem to be considered as in a state of pupilage, resembling that of a ward to his guardian. General Acts of Congress do not apply to them, unless so expressed as to clearly manifest an intention to include them: *Elk* v. *Wilkins*, 112 U. S. 94; *Crow Dog's Case*, 109 Id. 556; *Cherokee's Tobacco Case*, 78 Id. 616; *New York Indians' Case*, 72 Id. 761; *U. S.* v. *Halliday*, 70 Id. 407; *U. S.* v. *Rogers*, 45 Id. 567.

Though an Indian surrenders himself to the jurisdiction of the United States, the United States government must accept that surrender before he will be recognized as a citizen: *Elk* v. *Wilkins*, *supra*. Indians born members of any Indian tribe within the United States, which still holds its tribal relations, are not citizens. Neither will they become citizens even if they have separated themselves from their tribes and reside among white citizens of a State, if they have not been naturalized, or taxed, or recognized as citizens by the United States, or by any of the States. In the case of *Elk* v. *Wilkins*, *supra*, HARLAN and WOODS, JJ., filed a dissenting opinion, holding that if an Indian was born in the United States, under the dominion and within jurisdictional limits thereof, and had acquired a residence in one of the States with the State's consent, and was subject to taxation and other duties imposed upon citizens, he thereby became a citizen, under the provisions of the Fourteenth and Fifteenth Amendments to the Federal Constitution. They hold that if this is not so, then "there is still in this country a despised and rejected class of persons with no nationality whatever, who, born in our territory, owing no allegiance to any foreign power, and subject, as residents of the State, to all the burdens of government, and yet not members of any political community, nor entitled to

any of the rights, privileges, or immunities of citizens of the United States."

V. *Chinese.* Any person born within the dominion and jurisdiction of the United States of alien or citizen Chinese parents, is a citizen: *In re Look Tin Sing*, *supra;* but no alien Chinese can become a naturalized citizen of the United States: sec. 14, Act of Congress, May 6, 1882, 22 Stat. 61; because Congress has enacted a law forbidding the State and United States Courts to admit Chinese to citizenship. But a law discriminating against Chinese laborers, by forbidding contractors to employ them upon public works, is illegal and void: *Baker* v. *Portland*, U. S. Circ. Ct. Dist. Ore. July 21, 1879, 5 Sawyer, C. C. 566. Before the Act of May 6, 1882, it was held by one court that a Chinese could not be naturalized and admitted to citizenship: *Ah Kow* v. *Neenan*, U. S. Circ. Ct. Dist. Cal. July 7, 1879, 5 Sawyer, C. C. 552; but this decision was not followed by some of the States, and a few Chinese were admitted to citizenship as can be found by looking to the records of some of the State courts.

VI. *Rights and Immunities.* (a) *Jury Service.* Colored citizens have a right to serve on grand and petit juries, the same as the white. Denying them this right is a discrimination forbidden by the Fourteenth Amendment: *Strauder* v. *W. Virginia*, 100 U. S. 303; *Ex parte Virginia*, 100 Id. 339; *Com.* v. *Johnson*, 78 Ky. 509; *Green* v. *State*, 73 Ala. 26. But in Nevada, it is held that the law denying the Mongolians the right to serve on juries is constitutional: *State* v. *Ah Chew*, 16 Nev. 50. Colored children cannot be excluded from the public schools on account of their color. But separate schools may be established for the exclusive use of the colored children. But these separate schools must be established at public expense, and must give facilities for education equal to those of the other schools. By this equality is given. *Identity* of rights and immunities is not guaranteed: *Ward* v. *Flood*, 48 Cal. 36; *Cory* v. *Carter*, 48 Ind. 327; *People* v. *Gallagher*, 93 N. Y. 438; *Claybrook* v. *Owensboro*, U. S. Dist. Ct. Dist. Ken. 1883, 16 Fed. Rep. 297.

So, also, carriers of passengers can assign separate apart-

ments to white and to colored passengers, when they, in good faith, furnish accommodations equal in all respects and make no discriminations: *Murphy* v. *Western & A. R. R. Co.*, U. S. Cir. Ct., E. Dist. Tenn. April Term, 1885, 23 Fed. Rep. 637; *Logwood* v. *Memphis & C. R. R. Co.*, U. S. Cir. Ct. W. Dist. Tenn. March 18, 1885, Id. 318; *The Sue*, U. S. Dist. Ct. Dist. Md. Feb. 2, 1885, 22 Id. 843. See, also, 27 AMERICAN LAW REGISTER, 272.

(b) *Inter-State Rights.* A State may establish one system of law in one portion of its territory and another system in another, provided such laws do not encroach upon the proper jurisdiction of the United States, or abridge any of the immunities of the citizens of the United States, or deprive any person of rights, without due process of law, or deny to any person within its jurisdiction the equal protection of the law: *Missouri* v. *Lewis*, 101 U. S. 22. Immunities and privileges do not mean the right to hold office and to vote; but mean that all citizens shall have the right to acquire property and to hold it under the same protection from the laws of the State as is afforded to the property of the citizens of that State; that such property shall not be subject to any burdens or taxes not imposed on the property of the citizens of that State: *Campbell* v. *Norris*, 3 H. & McH. (Md.) 554; *Warren M'f'g Co.* v. *Etna Ins. Co.*, U. S. Circ. Ct. Dist. Conn., 2 Paine, C. C. 501; *Wiley* v. *Parmer*, 14 Ala. 627; *Cincinnati, etc., Ins. Co.* v. *Rosenthal*, 55 Ill. 85. Citizens of all the States have the right to go into any State and carry on business; to hold property and be protected like citizens, and to enforce personal privileges: *Corfield* v. *Coryell*, U. S. Cir. Ct. Dist. Penn. April T. 1823, 4 Wash. C. C. 380.

The Fourteenth Amendment protects all citizens in their privileges and immunities as such, against the action of their own State or of other States in which they may happen to be. One of the fundamental rights of all citizens is the right to pursue any lawful employment in a lawful manner: *Live Stock Ass.* v. *Crescent City Co.*, U. S. Circ. Ct. Dist. La. April T. 1870, 1 Abb. (U. S.) 388.

There are many rights and privileges which depend upon actual residence, such as the right of suffrage, the right to

have the benefit of exemption laws, and to take fish in the waters of the State: Cooley's Const. Lim. *397. For instance, a State can prohibit the citizens of other States from planting oysters in a stream within its boundaries where the tide ebbs and flows. This right can be granted to its own citizens exclusively. Such a right is not a privilege or immunity of general but of special citizenship. It does not belong of right to the citizens of all free governments, but only to the citizens of the particular State. They own it by citizenship and domicile united: *McCready* v. *Virginia*, 94 U. S. 391; *State* v. *Medbury*, 3 R. I. 138.

Every citizen of the State, and of the United States, has a constitutional right to pass through or into a State, without imprisonment or restraint, except by due process of law, subject to such legislative regulations as may be imposed in the exercise of the police power: *Joseph* v. *Randolph*, 71 Ala. 499; *Ward* v. *Maryland*, 79 U. S. 418.

(c) *Corporations.* A corporation aggregate is not a citizen within the meaning of the clause of the Federal Constitution which declares "the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States:" *Ducat* v. *City*, 48 Ill. 172; *Paul* v. *Virginia*, 75 U. S. 168; *Bank* v. *Earle*, 38 Id. 519; nor a person, within the meaning of section one of the Fourteenth Amendment: *Ins. Co.* v. *New Orleans*, U. S. Circ. Ct. Nov. T. 1870, 1 Woods, C. C. 85. But it is a person within the meaning of the Civil Rights Act: *N. W. Fertilizing Co.* v. *Hyde Park*, U. S. Cir. Ct. N. Dist. Ill. March, 1873, 3 Biss. C. C. 480.

Corporations are subject to the general law of the land, like natural citizens, and are not exempt from the proper and reasonable control of the State, in cases where they have abused their rights and immunities: *Chicago Life Ins. Co.* v. *Needles*, 113 U. S. 574. The police power of the State is ample to regulate and control corporations in the use of their franchises and powers, whenever there is an encroachment by them upon public health, morals or safety: *New Orleans Gas Light Co.* v. *Louisiana Light, etc.*, 115 U. S. 650. See, also, 27 AMERICAN LAW REGISTER, 227.

(d) *Inter-State Commercial Agents.* A commercial traveller is neither a peddler nor a merchant, so as to make him liable to the payment of taxes, under a city ordinance; nor will a single sale and delivery of goods by such traveller out of a sample quantity constitute such agent or other person a peddler or merchant: *Com.* v. *Farnum*, 114 Mass. 267; *Kansas* v. *Collins*, 34 Kan. 434; *Com.* v. *Jones*, 7 Bush, 502. A law imposing a license fee upon commercial travellers for selling imported goods, which fee is not required of agents selling goods manufactured within the State, is invalid: *Webber* v. *Virginia*, 103 U. S. 344; *Welton* v. *Missouri*, 91 U. S. 275; *New Orleans* v. *Boat Co.*, 33 La. Ann. 647; *Higgins* v. *Lime*, 103 Mass. 1.

A statute of Tennessee imposed on all commercial travellers and others in like business outside of the State, a license for selling merchandise within a certain district of the State. This Act was held invalid, as an attempt to regulate commerce among the States, which power, by the Federal Constitution, is granted exclusively to Congress: *Robbins* v. *Taxing District, etc.*, 120 U. S. 489.

All laws imposing a tax upon commercial travellers selling by sample, coming from outside of the State, are unconstitutional: *Corson* v. *Maryland*, 120 U. S. 502, because they are attempts to regulate inter-state commerce, which power rests with Congress whenever the subjects of it are international in their character or admit of one uniform system of regulation: *Wabash, etc., R. R. Co.* v. *Illinois*, 118 U. S. 557; *Gloucester* v. *Pennsylvania*, 114 Id. 196; *Mobile* v. *Kimball*, 102 Id. 691; *Hannibal & St. Joe R. R. Co.* v. *Husen*, 95 Id. 465; *Henderson* v. *Mayor, etc.*, 92 Id. 259. See 27 AMERICAN LAW REGISTER, 77.

The people of this country are citizens of the United States, as well as of individual States, and have rights under the Constitution of the United States independent of the individual States, and free from any molestation from them; but when the goods are imported into the State and become a portion of the great mass of property, then the State can impose a tax on them in like manner as other goods of similar

character are taxed: *Brown* v. *Houston*, 114 U. S. 622: *Howe Machine Co.* v. *Gage*, 100 Id. 676.

A discriminating tax imposed by a State, operating to the disadvantage of the products of other States, when brought into said State, is, in effect, a regulation in restraint of commerce among the States, and as such is a usurpation of the power conferred by the Constitution upon Congress: *Walling* v. *Michigan*, 116 U. S. 446; *Welton* v. *Missouri*, 91 Id. 275; *State* v. *McGinnis*, 37 Ark. 362. See 27 AMERICAN LAW REGISTER, 171.

The power of Congress is exclusive, and where it fails to legislate, the subject shall be free from restrictions, or impositions, and the States must not act in the matter, except as to local concerns: *Wabash, etc., R. R.* v. *Illinois*, 118 U. S. 557; *Pickard* v. *Pullman*, 117 Id. 34; *Walling* v. *Michigan*, 116 Id. 446; *Brown* v. *Houston*, 114 Id. 622; *Mobile* v. *Kimball*, 102 Id. 691; *Welton* v. *Missouri*, 91 Id. 275; *Hannibal & St. Joe R. R. Co.* v. *Husen*, 95 Id. 465; *Taxes Cases*, 82 U. S. 232.

VII. *Limitations of the Amendments of the Federal Constitution.* The first ten amendments to the Federal Constitution are not intended to limit the powers of the State government in respect to their own citizens, but to operate on the government alone: *Barron* v. *Baltimore*, 32 U. S. 243; *Livingston* v. *Moore*, Id. 469; *Fox* v. *Ohio*, 46 Id. 410; *Smith* v. *Maryland*, 59 Id. 71; *Withers* v. *Buckley*, 61 Id. 84; *Pervear* v. *Commonwealth*, 72 Id. 475; *Twitchell* v. *Commonwealth*, 74 Id. 321; *Justices* v. *Murray*, 76 Id. 274; *Edwards* v. *Elliott*, 88 Id. 532; *Walker* v. *Sauvinet*, 92 Id. 90; *United States* v. *Cruikshank*, 92 Id. 542; *Pearson* v. *Yewdall*, 95 Id. 294; *Davidson* v. *New Orleans*, 96 Id. 97; *Kelly* v. *Pittsburgh*, 104 Id. 78; *Presser* v. *Illinois*, 116 Id. 252; *Spies* v. *Illinois*, 123 Id. 131; s. c. 27 AMERICAN LAW REGISTER, 23; *Colt* v. *Eves*, 12 Conn. 243; *Rowan* v. *State*, 30 Wis. 149; *Jane* v. *Com.*, 3 Met. (Ky.) 22.

The guarantee of due process of law is not violated by a State law, which authorizes a man to be tried and convicted of murder without any indictment by a grand jury. Under the Fourteenth Amendment, no law is violated by this pro-

ceeding. The substitution for a presentment or indictment by a grand jury of a proceeding by information, after examination and commitment by a magistrate certifying to the probable guilt of a prisoner, with the right on his part to the aid of counsel, and to the cross-examination of the witnesses produced by the prosecution is "due process of law": *Hurtado* v. *California*, 110 U. S. 516.

A trial by jury in civil suits at common law pending in State courts, is not a privilege or immunity of national citizenship, which the States are forbidden to abridge by the provisions of the Fourteenth Amendment: *Walker* v. *Sauvinet*, 92 U. S. 90. In the trial of claims against the government, the claimant has no constitutional right to a trial by jury. He must proceed according to the mode established by statute: *McElrath* v. *United States*, 102 U. S. 426; *Pelham* v. *State*, 30 Tex. 422; *Bledsoe* v. *State*, 64 N. Car. 392.

The Fourteenth Amendment adds nothing to the rights of one citizen as against another. It furnishes additional protection for the privileges already existing, and prohibits the States from encroaching upon the fundamental rights which belong to every citizen as a member of society. Securing to the citizens of the States enjoyment of an equality of rights, is the province of the State governments. The Fourteenth Amendment guarantees that the States shall not deny this: *United States* v. *Cruikshank*, 92 U. S. 542.

The right to bear arms is not guaranteed by the Second Amendment, as that is a restriction upon the powers of the national government; but the States cannot prohibit the people from keeping and bearing arms so as to deprive the United States of their rightful resource of maintaining the public security: *Presser* v. *Illinois*, 116 U. S. 252. A statute prohibiting the carrying of concealed weapons is no infringement of the constitutional right of citizens. It is a public prohibition of a practice which is found dangerous to the good order of society: *State* v. *Speller*, 86 N. Car. 697; *Wright* v. *Commonwealth*, 77 Pa. St. 470; *Hill* v. *Georgia*, 53 Ga. 472; *Haile* v. *State*, 38 Ark. 564; *State* v. *Wilforth*, 74 Mo. 528. But a law prohibiting the wearing of weapons openly upon

the person would be unconstitutional: *Nunn* v. *State*, 1 Kelly (Ga.) 243.

The Fourteenth Amendment does not take away from the individual States those powers of police that were reserved to them at the time the original Constitution was adopted. No amendment was designed to interfere with the power of the State, termed the police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people: *Barbier* v. *Connally*, 113 U. S. 31. But when the State is providing by legislation, for the protection of the public health, the public morals, or the public safety, it is subject to the paramount authority of the Federal Constitution, and must not violate rights secured or guaranteed by that instrument, or interfere with the execution of the powers confided to the general government: *Henderson* v. *New York*, 92 U. S. 259; *Gas Light Co.* v. *La. Light Co.*, 115 Id. 650; *Walling* v. *Michigan*, 116 Id. 446; *Yick Wo* v. *Hopkins*, 118 Id. 356; *Morgan's Steamship Co.* v. *Board of Health*, 118 Id. 455.

No State can, by any contract, limit the exercise of this power, to the detriment of the public health and the public morals: *Butcher's Union Co.* v. *Crescent City Co.*, 111 U. S. 751. No legislation can bargain away the public health or the public morals. Neither can the people of a State do it. Government is organized with a view to the preservation of the people, and cannot divest itself of the power to provide for its citizens: *Stone* v. *Mississippi*, 101 U. S. 816. The police power extends to the protection of the lives, the health, and the property of the community against the injurious exercise by any citizen of his own rights. And this authority of the States does not encroach upon any power which has been confided, expressly or by implication, to the national government: *Patterson* v. *Kentucky*, 97 U. S. 501. A State can prohibit the manufacture and sale of spirituous liquors, and such prohibition is not in conflict with the Fourteenth Amendment. It is within the police power of a Legislature to determine whether the manufacture and sale of intoxicants will affect the public injuriously, and to prohibit the same. The State has the power to declare that any place, under such

prohibition law, kept and maintained for the illegal manufacture and sale of such liquors, shall be deemed a common nuisance and be abated, and at the same time provide for the indictment and trial of the offender. Such public nuisance may be abated by perpetual injunction without the verdict of a jury: *Mugler* v. *Kansas*, 123 U. S. 623. Society has the power to protect itself, by legislation, against any injurious business. Power does not exist with the whole people to control rights that are purely and exclusively private, but government may require each citizen to so conduct himself, and so use his own property, as not unnecessarily to injure another: *Munn* v. *Illinois*, 94 U. S. 124. If a State deems the retail and internal traffic in intoxicants injurious to its citizens, by producing idleness, vice, or debauchery, the Federal Constitution does not prohibit the State from regulating and restraining the traffic, or from prohibiting it altogether. A State must regulate its domestic affairs, such as internal commerce, contracts, and the transmission of estates, real and personal, and acts upon internal matters which relate to its moral and political welfare. Over these subjects the Federal government has no control. The States are sovereign within their respective dominions, and have power to regulate all their internal commerce, and direct how it shall be conducted in articles intimately connected either with public morals or public safety or public prosperity. The police power, which is exclusively in the State, is alone competent to correct great evils, and to provide all measures of restraint or prohibition necessary to effect the purpose. The State has the power to prohibit the sale and consumption of an article of commerce which it believes to be pernicious in its effects, and the cause of disease, pauperism, and crime: *License Cases*, 46 U. S. 504.

The right to sell intoxicants is not protected by the Fourteenth Amendment. This right exists, if at all, by the authority of the State, and does not grow out of citizenship of the United States: *Bartemeyer* v. *Iowa*, 85 U. S. 129. As a police regulation, for the preservation of the public morals, a State law prohibiting the manufacture and sale of intoxicating liquors, is not repugnant to the Federal Constitution:

Boston Beer Co. v. *Massachusetts*, 97 U. S. 33; *Foster* v. *Kansas*, 112 Id. 206.

Under the power of eminent domain, a State may take property for public use by giving a just compensation, and if a State converts property to a public use, not by absolute conversion, but destroying its value completely, and inflicts irreparable and permanent injury to the property, the injured citizen must be paid: *Pumpelly* v. *Green Bay Co.*, 80 U. S. 168; *Northern Transportation Co.* v. *Chicago*, 99 Id. 642. This principle does not apply under the police power of the State, when a citizen uses his property for certain forbidden purposes which are injurious to the public interests. "A prohibition simply upon the use of property for purposes that are declared, by valid legislation, to be injurious to the health, morals or safety of the community, cannot in any just sense, be deemed a taking or an appropriation of property for the public benefit. Such legislation does not disturb the owner in the control or use of his property for lawful purposes, nor restrict his right to dispose of it, but is only a declaration by the State that its use by any one, for certain forbidden purposes, is prejudicial to the public interests. Nor can legislation of that character come within the Fourteenth Amendment in any case, unless it is apparent that its real object is not to protect the community or to promote the general well-being, but, under the guise of police regulation, to deprive the owner of his liberty and property without due process of law. * * * * The exercise of the police power by the destruction of property which is itself a public nuisance, or the prohibition of its use in a particular way, whereby its value becomes depreciated, is very different from taking property for public use, or from depriving a person of his property without due process of law:" *Mugler* v. *Kansas*, 123 U. S. 623.

The protection of the public health and the public morals is a governmental power, continuing in its nature, and to be used as the special exigencies of the case require. For this purpose the largest legislative discretion is allowed, and this discretion cannot be bartered away, any more than the power itself. The Legislature can, by appropriate laws, discontinue

any manufacture or traffic which is injurious to the public safety or to the public morals, notwithstanding any incidental inconvenience which individuals or corporations may suffer: *Stone* v. *Mississippi*, 101 U. S. 816; *Beer Co.* v. *Massachusetts*, 97 Id. 32.

A State law forbidding a railway company to bring intoxicating liquor into a State, unless such company has been furnished with a certificate from the county auditor of the county to which the liquor is to be transported, showing that the consignee is legally authorized to sell it, is invalid. The power to regulate or forbid the sale of a commodity after it has been brought into a State does not carry with it the right and power to prevent its introduction by transportation from another State. Such importation comes under the head of inter-state commerce and cannot be forbidden by the State. A party has a right to import intoxicating liquors for his own consumption, in unbroken packages, into a State; but the State can forbid the sale within the State, under a prohibitory law: *Bowman* v. *R. R. Co.*, 125 U. S. 465. This case agrees with others, as to the State's right to regulate internal commerce and to exercise its police power. As the law now stands, a State has the clear right to regulate the sale of commodities within its jurisdiction, whenever it is necessary to exercise that right under its police power, but it cannot prohibit the importation into its territory of commodities, in unbroken packages, for consumption. In *Brown* v. *Maryland*, 25 U. S. 447, there seems to be a conflict with the late decisions. In this decision, the Court held that "sale is the object of importation, and is an essential ingredient of that intercourse of which importation constitutes a part. It is as essential an ingredient, as indispensable to the exercise of the entire thing, then, as importation itself. It must be considered as a component part of the power to regulate commerce. Congress has a right, not only to authorize importation, but to authorize the importer to sell."

But this decision cannot now be considered as authority on this point, for it has been abandoned in the late cases. It does not seem to recognize the right of a State to act under its police power, to regulate the sale of a commodity which

proves injurious to its citizens. A statute is valid which makes it unlawful for any person to manufacture, sell, or offer for sale, any butter or cheese or article designed to take the place of these articles, produced from any compound other than unadulterated milk or cream. Such a statute of a State is not a violation of the Fourteenth Amendment to the Federal Constitution, as it is entirely within the police power of the State to protect the public health. The question, whether the manufacture of oleomargarine is, or may be, conducted in such a way as to require the suspension of the business rather than its regulation, is one of fact and of public policy which belong to the legislative department to determine. If such legislation is unwise or unnecessarily oppressive, the remedy is an appeal to the Legislature or to the ballot-box, and not to the judiciary. The judiciary department must not give effect to statutory enactments plainly forbidden by the Constitution. A statute does not deny equal protection of the laws when the same penalties and burdens are imposed upon all persons engaged in the same business: *Powell* v. *Pennsylvania*, 127 U. S. 678.

D. H. PINGREY.

Bloomington, Ills.

RECENT AMERICAN DECISIONS.

Supreme Court of Tennessee.

BLOCK *v.* MERCHANTS' DESPATCH TRANSPORTATION CO.

A despatch company cannot by special contract exempt itself from liability for the loss or injury of goods which it has undertaken to carry, where such loss or injury is caused by the negligence of a railroad company it has engaged to transport the goods or by the negligence of the servants or employés of such railroad.

ERROR to the Circuit Court of Davidson County; FRANK T. REED, Judge.

Rice & Bell, for plaintiff in error.

Smith & Allison, for defendant in error.

CALDWELL, J. This action was brought in the Circuit Court of Davidson County by Block Bros. against the Mer-